

HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

3. The family development plan prepared for Mr. G. by the Reach Up counselor called for Mr. G. to remain employed at McDonald's, to work all available hours and to report all hours worked to PATH. Mr. G. was also to participate in a

work search for additional hours to reach a total of forty per week. Finally, he was to report every Tuesday at 8:30 a.m. to talk about his work search. Mr. G. signed a document saying he agreed to this plan on September 4, 2003.

4. Mr. G. informed the Reach UP counselor sometime in the week following September 12 that he had been laid off his job. The Reach Up counselor solicited an employment termination statement from the employer. On September 15, 2003, the employer provided the statement saying that Mr. G. had last worked on September 11 and had been let go because "I need people to show up on these shifts because I can't run a store without people here."

5. Mr. G. was due to show up on September 19, 2003 for a meeting with the Reach Up counselor. The counselor told Mr. G. that the meeting on the 19<sup>th</sup> would be a "conciliation meeting" and just before a meeting handed him paperwork showing that such was the purpose of the meeting. Mr. G. disagreed that he was laid off for failure to show up for work, saying that he had come for all the scheduled days. The Reach Up worker told Mr. G. that he believed the employer's statement and that he would notify PATH that his grant should be sanctioned until he took part in work activities.

6. PATH sent a notice to the petitioners dated September 19, 2003 saying that the grant would be sanctioned as of October 1, 2003 because Mr. G. was dismissed from a job through no fault of the employer's. He was told that his benefits would be reduced by \$75 and also advised that he had to meet with the Reach Up counselor on October 1 in order to get his benefits for the next month. Finally, he was advised that the sanction would continue until he fully complied with Reach Up requirements for two weeks in a row or was off Reach Up benefits for an entire month.

7. The petitioners appealed this action and PATH did not sanction the benefits. In the meantime, however, the petitioners did not participate in a work search which would have removed the sanction. At a status hearing regarding the appeal, the petitioners were strongly advised to continue with their Reach Up work search activities both to remove the sanction and to prevent a new sanction from being placed on the grant.

8. In the month between the status conference and the hearing, Mr. G. participated in work search activities for the first two weeks but not for the last two weeks. He had no explanation for his failure to attend work search meetings

other than the fact that he is waiting to hear whether he got a job he applied for at a supermarket.

9. At the hearing both Mr. G. and the employer testified with regard to his employment performance. They agree that on August 25, 2003, Mr. G. became employed at the McDonald's restaurant. He was told when he was hired that he would be scheduled for twenty-five to thirty hours per week and that it was his responsibility to check the work schedule every Friday to determine the hours of employment for the next week.

10. The employer testified that Mr. G. reported to work on Monday, August 25, 2003 for training. He did not show up for work as he was scheduled to do on August 26, 2003. The following day he called in and said he would not be able to attend work for three days due to his need to attend a family funeral in southern Vermont. His paycheck from that week showed that he worked just over six hours.

11. The employer further testified that during the second week which began on September 1, 2003 that Mr. G. worked one day and part of another. The paycheck showed that Mr. G. worked nine hours despite the fact that he had been scheduled for at least three full days that week.

12. During the third and final week of employment which began on September 8, 2003, the employer testified that Mr. G. was given fewer days of work since he had not shown up the week before. He was scheduled for two days and completely failed to show up for one six hour shift. He did show up on the second day but left after two and a half-hours. His paycheck for that week shows that he was only paid for two and a half hours.

13. The employer testified that Mr. G. was told when he came to pick up his paycheck on September 12, 2003 that he was terminated from employment because his attendance on work shifts had not been dependable. The evidence clearly shows that Mr. G. worked no more than seventeen and a half hours during a period of time when he was originally expected to work at least seventy-five, although due to non-attendance he was actually scheduled for a little over sixty.

14. Mr. G. testified that he had not failed to attend any day that had actually been scheduled. He agreed that he did not attend work the first week due to a family funeral but says that he attended everything scheduled for him the second week. He says that the schedule was confusing, had been altered and that he was told to go home on one occasion

because the electricity went out. He believes he was terminated because people just didn't like him.

15. Mr. G.'s testimony is deemed not credible in this regard for several reasons. It does not make sense that his employer would have scheduled him for only six to nine hours per week as it would have hardly been worth the employer's time to train him for so little service. In addition, after being warned by the hearing officer to begin engaging in a work search (including weekly meetings with the Reach Up counselor) while the appeal was pending, Mr. G. only checked in for the first two weeks and then abandoned contact. This behavior casts considerable doubt on Mr. G.'s testimony that he always showed up for all scheduled work shifts.

16. The employer's testimony as to Mr. G.'s work performance is found to be entirely credible and is adopted herein as fact.

ORDER

The decision of PATH is affirmed.

REASONS

Under PATH's regulations, a Reach Up participant is required to comply with the work requirements in his family development plan unless there is good cause for failure to do

so. W.A.M. 2370 and 2370.1. Noncompliance is specifically defined as the failure to "show up for work" or to "retain employment." Before a sanction is approved, PATH requires a conciliation process during which the counselor develops facts regarding the noncompliance and holds a conciliation meeting to discuss those facts and whether or not there is good cause for the noncompliance. W.A.M. 2371. If, after the conciliation process, the counselor cannot resolve the facts or the issue of good cause in favor of the participant, PATH notifies the participant that a fiscal sanction will take place. W.A.M. 2372.

In this case, Mr. G.'s family development plan clearly required him to show up for work and to retain his employment at McDonald's. When he lost that job, the counselor contacted the employer to obtain her version of the discharge. He also contacted Mr. G. for a conciliation discussion with regard to the facts offered by the employer.<sup>1</sup> When the counselor could

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<sup>1</sup> The regulations have very specific requirements about notifying participants regarding conciliation meetings which were not carried out here. See W.A.M. 2371.1. Mr. G., who is pro se did not claim that he had been disadvantaged by the process used which has kept him from any sanction while this matter was resolved. Mr. G. was aware of and able to attend a meaningful conciliation meeting despite these notice defects and has not suffered any legal harm. For example, even after two months' opportunity (between the firing and the hearing), the petitioner had nothing new to offer with regard to his reasons for not attending work that he had not offered at the conciliation meeting. PATH counselors should be aware, however, that unfairness can occur towards petitioners if shortcuts are taken in this process.

not resolve the issue in Mr. G.'s favor, PATH notified the petitioners of the sanction and the ways it could be purged. Even after this notice and after a further emphasis of the importance of acting to remove the sanction, Mr. G. has continued to be out of compliance with work search requirements, including a weekly report to the counselor as required by the family development plan. After a fair hearing, the credible evidence indicates that the counselor was correct in his assessment that Mr. G.'s employment was terminated because he failed to show up for his job.

It must be concluded that PATH acted in accord with its regulations in placing sanctions on the petitioners' RUFA grant. As such, the Board is bound to uphold the decision of PATH. 3 V.S.A. § 3091(d), Fair Hearing No. 17. The petitioners are again urged to contact their counselor immediately to discuss how they can remove this sanction.

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